

REMARKS

The foregoing amendments and the following remarks are submitted in response to the communication dated March 19, 2008.

Status of the Claims

By this response and the above amendments, claims 5 and 12 are now pending in the application. Claims 1, 2, 8-11, 14-27 and 31, which are withdrawn from consideration, have been canceled without prejudice. Claims 3, 4, 6, 7 and 13 have also been canceled without prejudice. Applicants note that claims 28-30, which are withdrawn from consideration were previously canceled in the Preliminary Amendment mailed November 14, 2005. Further, claim 13, which was elected as part of Group II, was objected to and was not treated on the merits by the Examiner. Claim 13 is now canceled without prejudice. Claims 5 and 12 have been amended in order to more particularly point out and distinctly claim that which Applicants regard as the invention. Support for the amended claims can be found generally through Applicants' specification.

With respect to all amendments and canceled claims, Applicant has not dedicated or abandoned any unclaimed subject matter and, moreover, has not acquiesced to any rejections and/or objections made by the Patent Office. Applicant reserves the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional applications.

Claim Objections

We note that claims 5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. While claim 7 has now been canceled, Applicants point out that claim 5 has above been amended, including to be rewritten in independent form including all of the limitations of the base and any intervening claims.

Claim 12 is objected to in its recitation "isolated polypeptides", which the Examiner

remarks should be “isolated polypeptide”. Applicants have above amended claim 12 to correct the language to recite “isolated polypeptide”.

Claim 13 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to claims only in the alternative and cannot depend from any other multiple dependent claim. Claim 13 has above been canceled, making this objection moot.

Claim Rejections – 35 USC § 112

Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The examiner remarks that this written description rejection is made because the claims are interpreted as being drawn to a genus of products recited as “fragments, mutants, variants, analogs or derivatives thereof.” Without prejudice to further or future prosecution, Applicants have above canceled claim 6. In view of the cancellation of claim 6, Applicants respectfully assert that this rejection is now moot and may properly be withdrawn.

Claim Rejections – 35 USC § 102

Claims 3, 4, and 6 are rejected under 35 U.S.C. 102 (e) as being anticipated by Nelson et al (U.S. Patent Number 6,608,187). Nelson et al is cited as disclosing purified C1 bacteriophage lysin protein with a molecular mass of approximately 100 kDa, specific for group C streptococci, and further disclosing fragments, analogs, or derivatives of the lysin protein. Applicants respectfully disagree. Each of claims 3, 4, and 6 have above been canceled without prejudice. Applicants assert that this rejection is now moot and that each and any of the now pending and amended claims is novel and unanticipated by Nelson et al, U.S. Patent 6,608,187.

Claims 3 and 4 are rejected under 35 U.S.C. 102 (b) as being anticipated by Fischetti et al (U.S. Patent Number 6,056,955). Fischetti et al is asserted as disclosing harvesting and isolating lysin from group C streptococcal organisms after being infected with C1 bacteriophage. Applicants respectfully disagree. Each of claims 3 and 4 have above been canceled without prejudice. Applicants assert that this rejection is now moot and that each and any of the now pending and amended claims is novel and unanticipated by Fischetti et al, U.S. Patent 6,056,955.

Claims 3 and 4 are rejected under 35 U.S.C. 102 (b) as being anticipated by Fischetti et al (U.S. Patent Number 6,326,002). This Fischetti et al patent is cited as disclosing the isolation of lysin from group C streptococcal organisms after being infected with C1 bacteriophage.

Applicants respectfully disagree. Each of claims 3 and 4 have above been canceled without prejudice. Applicants assert that this rejection is now moot and that each and any of the now pending and amended claims is novel and unanticipated by Fischetti et al U.S. Patent 6,326,002.

Claims 3, 4, and 6 are rejected under 35 U.S.C. 102 (e) as being anticipated by Nelson et al (PNAS, 2001, 98(7):4107-4112). Nelson et al is cited as disclosing purified C1 bacteriophage lysin protein with a molecular mass of approximately 100 kDa, specific for group C streptococci. Applicants respectfully disagree. Each of claims 3, 4, and 6 have above been canceled without prejudice. Applicants assert that this rejection is now moot and that each and any of the now pending and amended claims is novel and unanticipated by Nelson et al (PNAS, 2001, 98(7):4107-4112).

The Double Patenting Rejections

The Examiner has rejected claims 3 and 4 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22 and 23 of U.S. Patent No. 6,056,955 (“the ‘955 Patent”). Although the conflicting claims are not identical, they are asserted to not be patentably distinct from each other. Applicants respectfully disagree. Each of claims 3 and 4 have above been canceled without prejudice. Applicants assert that this rejection is now moot and that each and any of the now pending and amended claims is patentably distinct from the ‘955 Patent.

Claims 3 and 4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 5,997,862 (“the ‘862 Patent”). Although the conflicting claims are not identical, they are asserted to not be patentably distinct from each other. Applicants respectfully disagree. Each of claims 3 and 4 have above been canceled without prejudice. Applicants assert that this rejection is now moot and that each and any of the now pending and amended claims is patentably distinct from the ‘862 Patent.

Claims 3 and 4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,017,528 (“the ‘528 Patent”). Although the conflicting claims are not identical, they are asserted to not be patentably distinct from each other. Applicants respectfully disagree. Each of claims 3 and 4 have above been canceled without prejudice. Applicants assert that this rejection is now moot and that each and any of the now pending and amended claims is patentably distinct from the ‘528 Patent.

Claims 3 and 4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,423,299 (“the ‘299 Patent”) in view of Nelson et al (PNAS, 2001, 98(7):4107-4112). Although the conflicting claims are not identical, they are asserted to not be patentably distinct from each other. Applicants respectfully disagree. Each of claims 3 and 4 have above been canceled without prejudice. Applicants assert that this rejection is now moot and that each and any of the now pending and amended claims is patentably distinct from the ‘299 Patent in view of Nelson et al (PNAS, 2001, 98(7):4107-4112).

Claims 3 and 4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,277,399 (“the ‘399 Patent”) in view of Fischetti et al (WO 01/19391). Although the conflicting claims are not identical, they are asserted to not be patentably distinct from each other. Applicants respectfully disagree. Each of claims 3 and 4 have above been canceled without prejudice. Applicants assert that this rejection is now moot and that each and any of the now pending and amended claims is patentably distinct from the ‘399 Patent in view of Fischetti et al (WO 01/19391).

CONCLUSION

Applicants respectfully request entry of the foregoing amendments and remarks in the file history of the instant Application. The Claims as amended are believed to be in condition for allowance, and reconsideration and withdrawal of all of the outstanding rejections is therefore believed in order. Early and favorable action on the claims is earnestly solicited.

Respectfully submitted,

KLAUBER & JACKSON

A handwritten signature in black ink, appearing to read 'Christine E. Dietzel', is written over a horizontal line.

Christine E. Dietzel, Ph.D.

Agent for Applicant(s)

Registration No. 37,309

KLAUBER & JACKSON
411 Hackensack Avenue
Hackensack NJ 07601
Tel: (201) 487-5800